

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X

JESUS VARGAS,

07 Civ. 2911 (PAC) (AJP)

Plaintiff,

NOTICE OF MOTION

- against -

**LEONARDO RODRIGUEZ
and FEDERAL EXPRESS CORP.,**

Defendants.

-----X

PLEASE TAKE NOTICE, that upon the annexed affidavit of LLOYD A. KATZ, dated the 1st day of May, 2007 and the accompanying Exhibits annexed thereto, the plaintiffs will move this Court before the Honorable Justice PAUL A. CROTTY, U.S.D.J. at the United States Courthouse, 500 Pearl Street, New York, New York on the day of May, 2007 at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an Order pursuant to 28 U.S.C.A. Section 1446 remanding the present action back to Supreme Court of the State of New York, County of Bronx, under Index number 22230/06, together with such other and future relief as to this court may deem just, proper and equitable.

**Dated: New York, New York
May 1, 2007**

Yours, etc.

CARLOS & KATZ, ESQS.

By: 
LLOYD KATZ (LK-8498)

**Attorney for Plaintiff
352 Seventh Avenue
Suite 409**

**New York, New York 10001
(212) 532-0890**

ANTHONY W. ECKERT, III, ESQ.

**Attorney for Defendants
Federal Express Corporation and
Leonardo Rodriguez
555 Fifth Avenue
15th Floor
New York, NY 100017
(212) 922-0450**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X

JESUS VARGAS,

07 Civ. 2911 (PAC) (AJP)

Plaintiff,

AFFIDAVIT

- against -

**LEONARDO RODRIGUEZ
and FEDERAL EXPRESS CORP.,**

Defendants.

-----X

STATE OF NEW YORK)

COUNTY OF NEW YORK)


LLOYD A. KATZ, being an attorney duly admitted to practice law in the Federal Courts of the State of New York, deposes and states the following:

- 1. I am an attorney with CARLOS & KATZ, ESQS., attorneys for the plaintiffs, JESUS VARGAS, and as such am fully familiar with all the facts and circumstances of the within action.**
- 2. This affidavit is submitted in support of the within motion requesting an order directing that the Court remand the entire action back to the State Supreme Court, Bronx County, on the grounds that together with such other and further relief as to this Court may deem just, proper and equitable.**
- 3. The basis of this application is the apparent untimeliness of the Notice of Removal dated April 11, 2007. The aforesaid Notice of Removal is attached hereto as Exhibit "A".**
- 4. The within action arises from an incident occurring on October 23, 2003 when the plaintiff, JESUS VARGAS, a pedestrian, alleges to have sustained personal injuries when was struck by a vehicle owned by the defendant, FEDERAL EXPRESS CORP. and operated by the defendant LEONARDO RODRIGUEZ on Hunts Point Avenue at or near the intersection of Garrison Street, Bronx, New York.**
- 5. A summons and verified complaint with venue being originally established in Supreme Court, Bronx County was filed with the County Clerk of Bronx County and thereafter was served upon the defendants, FEDERAL EXPRESS CORP. on December 11, 2006, through service upon the Secretary of State of New York and the affidavit of service**

thereon was filed with the County Clerk of Bronx County on December 15, 2006. The affidavit of service is attached hereto as Exhibit "B". The affidavit of service on the defendant LEONARDO RODRIGUEZ was filed with the County Clerk of Bronx County on December 20, 2006 and is attached hereto as Exhibit "C".

6. A copy of the summons and complaint is annexed hereto as part of Exhibit A.
7. Subsequently, your deponent's office received and answer on behalf of the defendant, after they removed the within action to the Federal Court. Annexed hereto as part of Exhibit "A" is a copy of the answer submitted on behalf of the defendants, FEDEERAL EXPRESS CORP. and LEONARDO RODRIGUEZ is annexed hereto as part of Exhibit "A". The aforesaid Answer is dated January 31, 2007.
8. It is respectfully submitted that the Notice of Removal is late pursuant to the provisions contained in 28 U.S.C.A. 1446 had to be filed within 30 days of the completion of service which would appear to have been upon the filing of the affidavits of service on the defendants with the office of the County Clerk, Bronx County on December 20, 2006.
9. It is also respectfully submitted that the Court should be then be remanded to the State Supreme Court, Bronx County for disposition.

WHEREFORE, it is respectfully requested that the instant motion be granted, remanding the present action back to Supreme Court of the State of New York, County of Bronx, under Index number 22230/06 for disposition, together with such other and further relief as this Court may deem just, proper and equitable.


LLOYD A. KATZ

Sworn to before me this
1st day of May, 2007


Notary Public

JORDAN SCHIFF
Notary Public, State Of New York
No. 02SC5082029
Qualified In New York County
Commission Expires 7/14/2007

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JESUS VARGAS,

07 Civ. 2911 (PAC)(AJP)

Plaintiff,

NOTICE OF REMOVAL

- against -

LEONARDO RODRIGUEZ
and FEDERAL EXPRESS CORP.,

Defendants.
-----X

TO THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK:

Defendant, FEDERAL EXPRESS CORPORATION ("FEDERAL EXPRESS"),
pursuant to 28 U.S.C. §1441, states:

1. A civil action bearing Index No. 22230/06 has been instituted by plaintiff, Jesus Vargas, and is pending in the Supreme Court of the State of New York, Bronx County, in which FEDERAL EXPRESS and LEONARDO RODRIGUEZ are defendants.
2. Defendant FEDERAL EXPRESS was and is incorporated in the State of Delaware and at all relevant times has had its principal place of business in the State of Tennessee.
3. Upon information and belief, plaintiff JESUS VARGAS, individually, was and is a citizen and resident of the State of New York.
4. On or about April 4, 2007, Defendant FEDERAL EXPRESS became aware that defendant LEONARDO RODRIGUEZ resides in Orlando, Florida, and did so at the time this action was filed in October 2006.

5. Therefore, this action is between citizens of different states as defined by 28 U.S.C. §1332(a)(1).

6. In his Verified Complaint, plaintiff seeks damages in an amount of that exceeds the jurisdictional limits of all lower Courts and to be determined at the time of trial.

7. Therefore, the amount in controversy exceeds \$75,000 as required by 28 U.S.C. §1332(a).

8. Thus, this court has original diversity jurisdiction and removal jurisdiction over this claim pursuant to 28 U.S.C. §1332 and 28 U.S.C. §1441(a).

9. In accordance with 28 U.S.C. §1446(b), this Notice of Removal is filed within thirty days after defendant, FEDERAL EXPRESS, first ascertained that this action is one which is removable.

10. Copies of the Summons and Verified Complaint and Defendants' Verified Answer, which constitute all process and pleadings received and served by defendants FEDERAL EXPRESS and LEONARDO RODRIGUEZ, in this action, are collectively annexed hereto as Exhibit "A".

WHEREFORE, defendant FEDERAL EXPRESS CORPORATION gives notice that this action is removed from said state court to this court.

Dated: New York, New York
April 11, 2007

ANTHONY W. ECKERT III, ESQ.

By: 

Anthony W. Eckert III (AWE-7949)
Attorney for Defendants
Federal Express Corporation and
Leonardo Rodriguez
555 Fifth Avenue
15th Floor
New York, NY 10017
(212) 922-0450

TO: DON A. CARLOS, JR., ESQ.
Attorneys for Plaintiff
352 Seventh Avenue
Suite 1500
New York, New York 10001
(212) 631-7442

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

JESUS VARGAS,

Plaintiff,

-against-

LEONARDO RODRIGUEZ and FEDERAL EXPRESS
CORP.,

Defendants.

Index No.: 22230-06

Date Purchased

SUMMONS

Plaintiff designates Bronx
County as the place of trial.

The basis of venue is:

Plaintiff's residence

Plaintiff resides at:

854 Hight Point Avenue

Apt. 2B

Bronx, NY 10454

County of Bronx

RECEIVED

To the above named Defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
October 17, 2006


DON A. CARLOS, JR., ESQ.

Attorneys for Plaintiff(s)

JESUS VARGAS

352 Seventh Avenue, Suite 1500

New York, New York 10001

(212) 631-7442

TO:

LEONARDO RODRIGUEZ

414 E. 204th Street

Apt. 9J

Bronx, NY 10467

FEDERAL EXPRESS CORP.

900 Midlantic Drive

Mount Laurel, NJ 08054

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No.: 22230-06
Date Purchased:

-----X
JESUS VARGAS,

VERIFIED COMPLAINT

Plaintiff,

-against-

LEONARDO RODRIGUEZ and FEDERAL EXPRESS
CORP.,

Defendants.
-----X

Plaintiff, by his attorneys, DON A. CARLOS, JR., ESQ., complaining of the Defendants, respectfully alleges, upon information and belief:

1. At all times herein mentioned, Plaintiff JESUS VARGAS was, and still is a resident of the County of Bronx, State of New York.
2. At all time herein mentioned, Defendant FEDERAL EXPRESS CORP. was, and still is a domestic business corporation duly organized and existing under and by virtue of the laws of the State of New York.
3. At all time herein mentioned, Defendant LEONARDO RODRIGUEZ was, and still is a resident of the County of Bronx, State of New York.
4. At all times herein mentioned, and on October 23, 2003, Defendant FEDERAL EXPRESS CORP. owned a motor vehicle bearing New York license plate number 18271AB.
5. At all times herein mentioned, and on October 23, 2003, Defendant LEONARDO RODRIGUEZ operated the aforesaid motor vehicle.
6. At all times herein mentioned, and on October 23, 2003, Defendant LEONARDO RODRIGUEZ operated the aforesaid motor vehicle with the permission of its owner, Defendant FEDERAL EXPRESS CORP..
7. At all times herein mentioned, and on October 23, 2003, Defendant LEONARDO

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COUNTY CLERK
BRONX COUNTY
RECEIVED

RODRIGUEZ operated the aforesaid motor vehicle with the knowledge of its owner, Defendant **FEDERAL EXPRESS CORP.**

8. At all times herein mentioned, and on October 23, 2003, Defendant **LEONARDO RODRIGUEZ** operated the aforesaid motor vehicle with the consent of its owner, Defendant **FEDERAL EXPRESS CORP.**

9. At all times herein mentioned, and on October 23, 2003, Defendant **LEONARDO RODRIGUEZ** operated said motor vehicle bearing license plate number 18271AB, NY within the scope of his employment with Defendant **FEDERAL EXPRESS CORP.**

10. At all times herein mentioned, and on OCTOBER 23, 2003, Defendant **FEDERAL EXPRESS CORP.** maintained the aforesaid motor vehicle.

11. At all times herein mentioned, and on October 23, 2003, Defendant **LEONARDO RODRIGUEZ** maintained said motor vehicle.

12. At all times herein mentioned, and on October 23, 2003, Defendant **FEDERAL EXPRESS CORP.** managed the aforesaid motor vehicle.

13. At all times herein mentioned, and on October 23, 2003, Defendant **LEONARDO RODRIGUEZ** managed the aforesaid motor vehicle.

14. At all times herein mentioned, and on October 23, 2003, Defendant **FEDERAL EXPRESS CORP.** controlled the aforesaid motor vehicle.

15. At all times herein mentioned, and on October 23, 2003, Defendant **LEONARDO RODRIGUEZ** controlled the aforesaid motor vehicle.

16. That on October 23, 2003, Hunts Point Avenue at or near its intersection with Garrison, County of Bronx, State of New York, were public thoroughfares.

17. That on October 23, 2003, Defendant **LEONARDO RODRIGUEZ** operated and controlled said motor vehicle at or about the above-mentioned location.

18. That on October 23, 2003, Plaintiff **JESUS VARGAS** was a lawful pedestrian at the above-mentioned location.

19. That on October 23, 2003 at the aforementioned location, the motor vehicle owned by **FEDERAL EXPRESS CORP.** and operated by Defendant **LEONARDO RODRIGUEZ** came into contact with the Plaintiff **JESUS VARGAS** at the above-mentioned location.

20. That as a result of the aforesaid contact, Plaintiff **JESUS VARGAS** was injured.

21. That the above-stated occurrence and the results thereof were in no way due to any negligence on the part of the Plaintiff contributing thereto, but were caused by the joint, several and/or concurrent negligence of the Defendants and/or said Defendants' agents, servants, employees and/or licensees in the ownership, operation, management, maintenance and control of their said motor vehicle.

22. Defendants were negligent, careless and reckless in the ownership, management, maintenance, supervision and control of their aforesaid vehicle and Defendants were otherwise negligent, careless and reckless under the circumstances then and there prevailing.

23. That Plaintiff **JESUS VARGAS** sustained serious injuries as defined by 5102(d) of the Insurance Law of the State of New York and loss greater than basic economic loss as defined by 5104 of the Insurance Law of the State of New York.

24. That this action falls within one or more of the exceptions set forth in CPLR 1602.

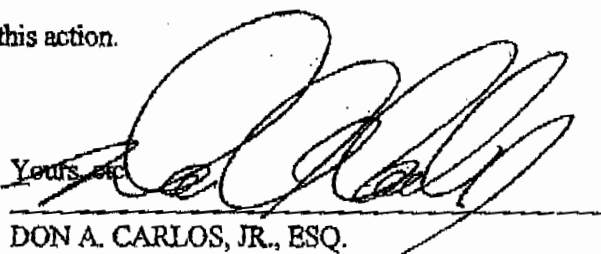
25. That by reason of the foregoing, Plaintiff **JESUS VARGAS** was damaged in a sum

which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, Plaintiff(s) demand(s) judgment against the Defendants herein, in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with the costs and disbursements of this action.

Dated: New York, New York
October 17, 2006

Yours, etc.



DON A. CARLOS, JR., ESQ.
Attorneys for Plaintiff(s)
JESUS VARGAS
352 Seventh Avenue, Suite 1500
New York, New York 10001
(212) 631-7442

ATTORNEY'S VERIFICATION

DON A. CARLOS, JR., an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am an attorney at **DON A. CARLOS, JR., ESQ.**, attorneys of record for Plaintiff(s),

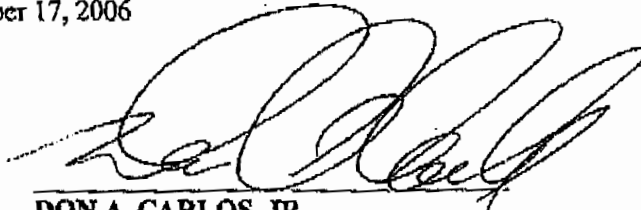
JESUS VARGAS. I have read the annexed

COMPLAINT

and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

The reason this verification is made by me and not Plaintiff(s) is that Plaintiff(s) is/are not presently in the county wherein the attorneys for the plaintiff(s) maintain their offices.

DATED: New York, New York
October 17, 2006



DON A. CARLOS, JR.

UNITED LAWYERS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No. 22230-06

-----X
JESUS VARGAS,

Plaintiff,

VERIFIED ANSWER

- against -

LEONARDO RODRIGUEZ and FEDERAL EXPRESS
CORP.,

Defendants.
-----X

Defendants, FEDERAL EXPRESS CORPORATION and LEONARDO RODRIGUEZ

(collectively hereinafter referred to as "Defendants"), by their attorney, ANTHONY W. ECKERT, III, ESQ., as and for their Verified Answer to the Verified Complaint, allege as follows:

**AS AND FOR AN ANSWER TO
THE FIRST CAUSE OF ACTION**

FIRST: Deny information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraphs "1", "3" and "16" of the Verified Complaint herein.

SECOND: Deny the allegations set forth in paragraphs "2", "4", "11", "13", "15", "18", "19", "20", "21", "22", "23", "24" and "25" of the Verified Complaint herein.

THIRD: Deny the allegations set forth in paragraphs "5", "6", "7", "8", "9", "10", "12", "14" and "17" of the Verified Complaint herein and refer all questions of law to the Court for determination.

**AS AND FOR A FOURTH AFFIRMATIVE
DEFENSE ON BEHALF OF DEFENDANTS**

SEVENTH: Plaintiff's action is barred by Article 51, Section 5104 of the Insurance Law of the State of New York.

**AS AND FOR A FIFTH AFFIRMATIVE
DEFENSE ON BEHALF OF DEFENDANTS**

EIGHTH: Plaintiff's recovery, if any, shall be reduced by the amount of any collateral payments received, in accordance with CPLR §4545.

**AS AND FOR A SIXTH AFFIRMATIVE
DEFENSE ON BEHALF OF DEFENDANTS**

NINTH: The Verified Complaint fails to state a cause of action against Defendant upon which relief may be granted.

**AS AND FOR A SEVENTH AFFIRMATIVE
DEFENSE ON BEHALF OF DEFENDANTS**

TENTH: Plaintiff's injuries were caused in whole or in part by her own negligence and, accordingly, her claim is barred or reduced by the applicable state law of comparative negligence.

**AS AND FOR AN EIGHTH AFFIRMATIVE
DEFENSE ON BEHALF OF DEFENDANTS**

ELEVENTH: Defendant asserts that this case falls within the limited liability provisions of section 1601 of the Civil Practice Law and Rules, and that the Defendant's liability for non-

economic loss, if any, shall be limited to its equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability.

**AS AND FOR A NINTH AFFIRMATIVE
DEFENSE ON BEHALF OF DEFENDANTS**

TWELFTH: Plaintiff's claims are barred and/or diminished in that plaintiff was not wearing a seatbelt at the time and place of the incident described in plaintiff's Verified Complaint. That any damages, injury and/or injuries sustained by plaintiff were caused in whole or in part by the failure of plaintiff to use seatbelts and/or other safety restraint devices which would have avoided or mitigated plaintiff's damages, and the amount of damages found, if any, are to be apportioned among the plaintiff and the Defendants according to the degree of responsibility that each is found to have in the occurrence in proportion to the entire responsibility of the occurrence.

**AS AND FOR A TENTH AFFIRMATIVE
DEFENSE ON BEHALF OF DEFENDANTS**

THIRTEENTH: That the Court does not have jurisdiction over the person of the Defendants herein, in that the Summons and Verified Complaint were not personally served upon the Defendants.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE
DEFENSE ON BEHALF OF DEFENDANTS**

FOURTEENTH: The plaintiff has failed to use all available means to mitigate damages.

**AS AND FOR TWELFTH AFFIRMATIVE DEFENSE
DEFENSE ON BEHALF OF DEFENDANTS**

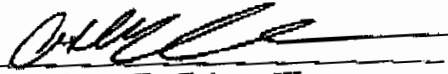
FIFTEENTH: Plaintiff's causes of action are time-barred pursuant to the applicable Statute of Limitations.

WHEREFORE, Defendants Federal Express Corporation and Leonardo Rodriguez demand judgment dismissing plaintiff's Verified Complaint herein, together with costs and disbursements of this action and for such other and further relief as this Court deems just and proper.

Dated: New York, New York
January 31, 2007

Yours, etc.

ANTHONY W. ECKERT, III, ESQ.

By: 
Anthony W. Eckert, III
Attorney for Defendants
90 Park Avenue, 18th Floor
New York, NY 10016
(212) 455-9249

TO: DON A. CARLOS, JR., ESQ.
Attorneys for Plaintiff
352 Seventh Avenue
Suite 1500
New York, New York 10001
(212) 631-7442

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

ANTHONY W. ECKERT, III, an attorney admitted to practice in the State of New York, affirms:

I am the attorney of record for defendants **FEDERAL EXPRESS CORPORATION** and **LEONARDO RODRIGUEZ** in the within action. I have read the foregoing Verified Answer and know the contents thereof; the same are true to my own knowledge, except as to the matters therein stated to be alleged on information and belief; and as to those matters I believe them to be true.

I further state that the reason this Verification is made by me and not by said defendant is because said party do not reside in New York County, where my office is located.

The grounds of my belief as to all matters not stated to be upon my knowledge, are investigative materials contained in my file and conversations with said defendant.

I affirm that the foregoing statements are true, under the penalty of perjury.

Dated: New York, New York
January 31, 2007



Anthony W. Eckert, III

AFFIDAVIT OF SERVICE BY MAIL

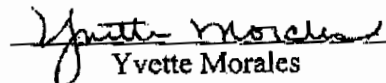
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Yvette Morales, being duly sworn deposes and says that deponent is not a party to the action, is over the age of 18 and resides in Kings County.

On the 31st day of January 2007, deponent served the within **VERIFIED ANSWER** upon:

DON A. CARLOS, JR., ESQ.
Attorneys for Plaintiff
352 Seventh Avenue
Suite 1500
New York, New York 10001

the address(es) designated by said attorney(s) by depositing same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.


Yvette Morales

Sworn to before me this
31st day of January, 2007


Notary Public

ANTHONY W. BOWERT III
Notary Public State of New York
No. 0207-85022
Qualified in Kings County
Commission Expires Dec. 9, 2009

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JESUS VARGAS,

Plaintiff,

- against -

LEONARDO RODRIGUEZ
and FEDERAL EXPRESS CORP.,

Defendants.
-----X

07 Civ. 2911 (PAC) (AJP)

**AFFIDAVIT OF
SERVICE BY MAIL**

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

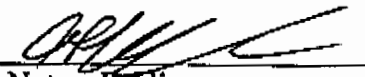
Yvette Morales, being duly sworn deposes and says that deponent is not a party to the action, is over the age of 18 and resides in Kings County.

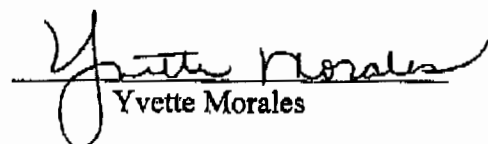
On the 11th day of April, 2007, deponent served the within NOTICE OF REMOVAL upon:

DON A. CARLOS, JR., ESQ.
Attorneys for Plaintiff
352 Seventh Avenue
Suite 1500
New York, New York 10001

the address(es) designated by said attorney(s) by depositing same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.

Sworn to before me this
11th day of April, 2007.


Notary Public
Notary Public, State of New York
No. 00000000000000000000
Commission Expires: 09/09/2009
Commission No. 00000000000000000000


Yvette Morales

Index No. 22230-06

Year 2006

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

JESUS VARGAS,

Plaintiff,

- against -

LEONARDO RODRIGUEZ and FEDERAL EXPRESS CORP.

Defendants

VERIFIED ANSWER

ANTHONY W. ECKERT, III, ESQ.

Attorney at Law

Attorney for Defendants

90 Park Avenue

13th Floor

New York, New York 10016

Telephone: (212) 455-9249

Facsimile: (212) 455-9251

TO: DON CARLOS DE ROSA

JOSEPH L. DE ROSA

30 Seventh Avenue

11th Floor

New York, New York 10016

Telephone: (212) 455-9249

Facsimile: (212) 455-9251

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK

Attorney: DON A. CARLOS, JR - 894

COUNTY OF BRONX

JESUS VARGAS

Index #: 22230/06

Plaintiff(s)

- against -

Date Filed:

LEONARDO RODRIGUEZ ET ANO

Defendant(s)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK: COUNTY OF NEW YORK ss:

STEVEN C. AVERY BEING DULY SWORN DEPOSES AND SAYS DEPONENT IS NOT A PARTY TO THIS ACTION, OVER THE AGE OF EIGHTEEN YEARS AND RESIDES IN THE STATE OF NEW YORK.

That on December 11, 2006 at 09:05 AM at

THE OFFICE OF THE SECRETARY OF STATE
41 STATE STREET
ALBANY, NY12231

deponent served the within two true copies of the SUMMONS & VERIFIED COMPLAINT on FEDERAL EXPRESS CORPORATION S/H/A FEDERAL EXPRESS CORP., the defendant/respondent therein named.

SECRETARY OF STATE by delivering two true copies to MS. DONNA CHRISTIE personally, an agent in the office of the Secretary of State of the State of New York and knew said individual to be AUTHORIZED to accept thereof.

Service upon the N.Y.S. Secretary of State under Section 306 of the Business Corporation Law and tendering the required fee of \$40.00.

Deponent further states that he describes the person actually served as follows:


Sex	Skin Color	Hair Color	Age (Approx.)	Height (Approx.)	Weight (Approx.)
FEMALE	WHITE	BLONDE	35	5'5	145

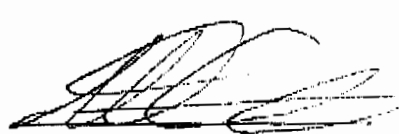
The Summons Series
had endorsed thereon
the Index number and
date of filing.

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2006 DEC 15 AM 9:45
COUNTY CLERK
BRONX COUNTY

Sworn to me on: December 11, 2006

Jinda Forman
Notary Public, State of New York
No. 01FO5031305
Qualified in New York County
Commission Expires August 1, 2010


Robin M. Forman
Notary Public, State of New York
No. 01FO6125415
Qualified in New York County
Commission Expires April 18, 2009


Stuart J. Forman
Notary Public State of New York
No 31-4828240
Qualified in New York County
Commission Expires June 30, 2007

STEVEN C. AVERY

Docket #: 451594

EXHIBIT C

COUNTY OF BRONX

JESUS VARGAS

Index #: 22230/06

Plaintiff(s)

- against -

Date Filed:

LEONARDO RODRIGUEZ ET ANO

Defendant(s)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK: COUNTY OF NEW YORK ss:

WILLIAM MORRISON BEING DULY SWORN DEPOSES AND SAYS DEPONENT IS NOT A PARTY TO THIS ACTION AND OVER THE AGE OF EIGHTEEN YEARS AND RESIDES IN THE STATE OF NEW YORK.

That on December 14, 2006 at 12:19 PM at

414 E 204TH STREET APT 4J
BRONX, NY 10467

deponent served the within true copy/copies of the SUMMONS & VERIFIED COMPLAINT on LEONARDO RODRIGUEZ, the defendant/respondent therein named,

AFFIXING TO
DOOR.

by affixing a true copy/copies of each to the door of said premises, which is the defendant's/respondent's last actual address within the state. Deponent was unable, with due diligence to find the defendant/respondent or a person of suitable age and discretion, thereat, having called there on

December 7, 2006 AT 6:45 PM

December 9, 2006 AT 3:05 PM

December 14, 2006 AT 12:19 PM

MAILING

Deponent enclosed a true copy/copies of same in a postpaid wrapper properly addressed to the defendant/respondent at the defendant's/respondent's last known residence at

414 E 204TH STREET APT 4J
BRONX, NY 10467

and deposited said wrapper in a post office or official depository under exclusive care and custody of the United States Postal Service within New York State on December 15, 2006 by REGULAR FIRST CLASS MAIL in an envelope marked PERSONAL & CONFIDENTIAL and not indicating on the outside envelope thereof, by return address or otherwise that the communication is from an attorney or concerns an action against the party to be served.

2006 DEC 20 AM 10:45
COUNTY CLERK
BRONX COUNTY

RECEIVED

The Summons Served
had endorsed thereon
the Index number and
date of filing.

sworn to me on: December 15, 2006

Robin M. Forman
Notary Public, State of New York
No. 01FO5031305
Qualified in New York County
Commission Expires August 1, 2010

Robin M. Forman
Notary Public, State of New York
No. 01FO6125415
Qualified in New York County
Commission Expires April 18, 2009

Stuart J. Forman
Notary Public State of New York
No 31-4828240
Qualified in New York County
Commission Expires June 30, 2007

WILLIAM MORRISON
License #: 870436
Docket #: 451494

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JESUS VARGAS,

07 Civ. 2911 (PAC) (AJP)

Plaintiff,
- against -

NOTICE OF MOTION
AND AFFIDAVIT

LEONARDO RODRIGUEZ
and FEDERAL EXPRESS CORP.,

Defendants.

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